

EXHIBIT 1

NON-EXCLUSIVE USE AGREEMENT FOR FIELDS AT WADE AND WHEELER

THIS AGREEMENT, by and between the City of Duluth, a municipal corporation under the laws of the State of Minnesota, hereinafter known as the "City," and Arrowhead Fast Pitch League Association, a Minnesota nonprofit corporation, hereinafter referred to as "User Group."

WHEREAS, City is the owner of baseball and softball fields located generally at 34th Avenue West and West Superior Street in Duluth, Minnesota, which fields are depicted on Exhibit A attached hereto and incorporated herein and hereinafter referred to as "Wade Fields." City is also the owner of baseball and softball fields located generally at 35th Avenue West and Grand Avenue in Duluth, Minnesota, which fields are depicted on Exhibit B attached hereto and incorporated herein and hereinafter referred to as "Wheeler Fields."

WHEREAS, User Group desires to use Fields 6 and 7 at the Wade Fields and the Wheeler Fields for its softball program, which facilities are hereinafter collectively referred to as the "Fields."

WHEREAS, it is the desire of the City to coordinate and allow the cooperative use of the Fields by as many groups as possible.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, City does hereby grant to User Group the non-exclusive rights to use the Fields subject to the terms and conditions hereinafter set forth:

1. ADMINISTRATION.

For purposes of administering this Agreement, the City shall act through its Manager of Parks and Recreation or designee (the "Manager"). User Group shall act through its Executive Director or designee.

2. GRANT OF RIGHTS.

a. Subject to the terms and conditions of this Agreement, City hereby grants to User Group the right to use the Fields and facilities described herein. City also hereby grants to User Group the use of scoreboards at Softball Fields 6 and 7 adjacent to Wade Fields. The use of the Fields shall not include access to or the use of concession areas at the Fields.

b. User Group accepts that City grants the use of the Fields without warranty of any kind, express or implied, of its fitness for User Group's use or suitability for a particular purpose and User Group accepts the premises "as is."

3. USE OF FIELDS.

- a. User Group may only use Fields for baseball or softball.
- b. No later than April 30 in each year of this Agreement, User Group shall provide to City its proposed use schedule of the Fields for games and practices during the upcoming season. No later than May 15 in each year of this Agreement, City shall furnish to User Group an anticipated schedule for the dates and times when User Group will be allowed to use the Fields ("User Group Schedule"). City may modify the User Group Schedule as it deems appropriate or necessary including reducing or increasing the times or dates when User Group will be entitled to use the Fields. User Group agrees to work with the other user groups to coordinate, when possible, to ensure optimum use of the Fields, and adjoining facilities.
- c. City shall have ultimate control of the scheduling of various users of the Fields. User Group agrees that it will use the Fields only in conformance with the schedule for the use thereof approved by the City.
- d. User Group agrees that it will provide supervision of its program participants and spectators by an adult User Group representative competently trained as appropriate for the activity.
- e. User Group is authorized to use the existing automatic scoreboard at Fields 6 and 7 at the Wade Fields during times immediately before, during, and after softball games played by User Group at the Fields. User Group shall be responsible for turning off the scoreboard used by it after each use, for returning to its proper place of storage and for securing it.
- f. All Equipment used by User Group shall be used in accordance with its design and intended use and shall be responsible for any damage occurring during User Group's use. Loss of the handheld remote for Fields 6 and 7 at the Wade Fields will result in a \$350.00 replacement cost.
- g. User Group specifically agrees that, in its use of the playing field and related areas, it will follow best practices to appropriately utilize said facilities and, in particular, will use its best efforts to minimize or eliminate to the extent practical any damage to the Fields and related areas. User Group shall be responsible for any damage caused by or resulting from the opposing team.
- h. User Group shall insure that the Fields are kept clean and in an orderly condition and that all paper, garbage, and other debris has been picked up and is deposited in the appropriate receptacles.
- i. User Group shall promptly notify the City in writing of any incident of injury or loss or damage to the Fields of City or any User Group participants or invitees occurring within the premises during its use of the facilities. Such written report shall be in a form acceptable to the City's Claims Investigator and Adjuster. A copy of the City's form of Incident Report is attached hereto as Exhibit C.

j. User Group shall prohibit alcohol use and smoking and use of tobacco products at Fields by User Group and User Group's invitees.

4. USAGE FEE AND FIELD LIMITS.

a. For use of the Fields, User Group shall pay to the City the following amounts (each year's amount is known as the "Usage Fee"):

1. In 2017, User Group will pay a Usage Fee of Five Thousand Four Hundred and no/100ths Dollars (\$5,400.00).

2. In 2018, User Group will pay a Usage Fee of Five Thousand Seven Hundred and no/100ths Dollars (\$5,700.00).

3. In 2019, User Group will pay a Usage Fee of Six Thousand and no/100ths Dollars (\$6,000.00).

b. During each year of this Agreement, User Group must pay that year's Usage Fee in full on or before July 31. Rental payments shall be deposited in Fund 210, Agency 030, Organization 3190, Revenue Source 4625-04.

c. User Group agrees to pay interest at a rate of 1.5% per month (18% per annum) on all past due balances due to the City. User Group agrees to pay any collection costs, including but not limited to court costs, collection fees, and attorney's fees.

d. In case of inclement weather, User Group may not use or occupy Fields. City shall have final authority to determine inclement weather requiring closure of the Fields.

e. Notwithstanding the Term of this Agreement, User Group's use of the Fields shall be limited between the dates of June 1 through July 31 during each year and subject to the following conditions:

1. Fields 6 and 7 at Wade Stadium: User Group may use the Fields Monday through Friday and the maximum hours of usage per field per day is seven (7) hours.

2. Wheeler Fields: User Group may use a maximum of two (2) fields at the Wheeler Fields on Wednesdays and the maximum hours of usage per field per day is five (5) hours.

f. User Group shall be entitled to host two (2) tournaments at the Fields per year during the Term of this Agreement for the period May 1 through July 31. The dates and times of said tournaments shall be approved and scheduled by the City's Recreation Specialist.

g. For any usage of the Fields over and above the limits stated above, User Group must receive approval of said usage in writing by the City's Recreational Specialist.

5. TERM.

Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on April 1, 2017, and expire on July 31, 2019, unless sooner terminated as provided for herein.

6. TERMINATION.

a. **WITHOUT CAUSE.** City may terminate this Agreement without cause by providing at least thirty (30) calendar days' written notice to User Group.

b. **FOR CAUSE.** City may terminate this Agreement for the material breach by User Group of any provision of this Agreement, including its Exhibits, if such breach is not cured to the satisfaction of City within seven days of delivery of a written notice by City (or such longer time as specified in the notice). The notice shall identify the breach and the necessary actions to remedy the breach.

c. **IMMEDIATELY BY CITY.** City may terminate this Agreement immediately on notice to User Group if City believes in good faith that the health, welfare, or safety of Fields, occupants, or neighbors would be placed in immediate jeopardy by the continuation User Group's operations.

d. **SURRENDER POSSESSION.** Upon termination of this Agreement, User Group agrees to surrender possession of Fields to City in as good condition and state of repair as said Fields were in at the time User Group took possession, acts of God excepted.

7. INSURANCE.

a. During the term of this Agreement, User Group shall have such coverage as will protect User Group and the City against risk of loss or damage to the Fields and against claims that may arise or result from the maintenance and use of the Fields during the Agreement Term. User Group shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than \$1,500,000 aggregate per occurrence for personal bodily injury and death and limits of \$1,500,000 for Fields damage liability. Insurance required in this Agreement shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota. Insurance shall cover public liability including premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the indemnity obligations set forth herein, and products - completed operations. User Group shall provide to City Certificates of Insurance evidencing said. The Certificates of Insurance shall name City as additional insured.

b. City reserves the right to require User Group to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minn. Stat. § 466.04 are increased

c. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the User Group's interests and liabilities. City officials are granted the authority to refuse to execute this Agreement upon default by User Group of the requirements of this paragraph.

d. The City does not represent or guarantee that these types or limits of coverage are adequate to protect the User Group's interests and liabilities.

e. The City shall not be liable to User Group or any injury or damage resulting from any defect in the construction or condition of the Fields nor for any damage that may result from the negligence of any other person whatsoever.

8. HOLD HARMLESS AND INDEMNIFICATION.

a. User Group hereby agrees to indemnify, save harmless, and defend the City and its officers, agents, servants, and employees from and against any and all claims, suits, loss, judgments, costs, damage, and expenses asserted by any person by reason of injury to or death of any and all persons, including employees or agents of the City or User Group, and including any and all damages to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of User Group arising out of, related to or associated with the use, management, maintenance or operation of the premises by User Group or performance of its obligations under this Agreement.

b. User Group will indemnify the City for any damage to any City property at Fields caused by User Group, its agents, volunteers, employees, and invitees.

9. INDEPENDENT RELATIONSHIP.

a. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting User Group as agents, representatives or employees of the City for any purpose or in any manner whatsoever. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

b. User Group's employees shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of User Group while so engaged and any and all claims whatsoever on behalf of User Group arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, or its officers, agents, contractors or employees shall in no way be the responsibility of the City. User Group and its officers and

employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers Compensation, Unemployment Insurance, disability pay or severance pay.

10. RECORDS RETENTION.

User Group agrees to maintain all Fields records during this Agreement and for six (6) years after its termination or expiration.

11. GOVERNMENT DATA PRACTICES.

User Group shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by User Group under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by User Group. If User Group receives a request to release the data referred to in this clause, User Group must immediately notify the City and consult with the City as to how User Group should respond to the request. User Group agrees to hold the City, its officers, and employees harmless from any claims resulting from the User Group's unlawful disclosure or use of data protected under state and federal laws.

12. NOTICES.

Unless otherwise provided herein, notice to the City or User Group shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

City of Duluth
Attn: Parks and Recreation Manager
411 W. First Street, Ground Floor
Duluth, Minnesota 55802

Lake Superior Girls Fastpitch
Attn: Dennis Peterson, Vice President
1633 Maple Grove Road
Duluth, Minnesota 55811

13. CITY ACCESS.

a. User Group shall permit the City, and its designees, to access and inspect the Fields at any time. User Group shall not change the locks or otherwise prohibit or inhibit City access to any portion of the Fields.

b. City shall be exclusively responsible for the design and designation of keying systems, lock changes, key fabrication and key distribution. User Group shall comply with City's Key Control Policy, a copy of which shall be provided to Agency, and is subject to unilateral change by City during this Agreement.

c. User Group shall not make copies of Fields keys. All keys shall be promptly returned to the City upon termination or expiration of this Agreement. If keys are not returned, City may rekey applicable Fields key locks and collect payment from User Group for actual City employee time and/or replacement costs.

14. TAXES.

User Group hereby agrees to pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of User Group's operations of Fields, including real property and sales taxes, if applicable. It is further agreed that City may pay the same on behalf of User Group and immediately collect the same from User Group, or reduce any amount owed User Group by City pursuant to this Agreement. User Group shall further be obligated to collect and/or pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and to file all required reports and forms in proper form related thereto on or before their due date.

15. GENERAL TERMS AND CONDITIONS.

a. User Group agrees that it will obey all laws, rules, and regulations applicable to its use of or occupancy of the Fields and to use its best efforts to insure that its players, coaches, employees and invitees so conform to such requirements. In addition, User Group agrees to procure at its expense all licenses and permits necessary for carrying out the provisions of this Agreement.

b. User Group agrees that it will not sublet the Fields, or any part thereof, and will not assign this lease or any interest therein, nor permit such lease to become transferred by operation of law or otherwise, and that no act or acts will be done or suffered whereby the same may be or become sublet or assigned in whole or in part.

c. This Agreement, together with all of its terms, covenants, and conditions is made in the State of Minnesota and is to be interpreted in accordance with the laws of the State of Minnesota.

d. User Group agrees that it shall neither assign nor transfer any rights or obligations under this Agreement.

e. The waiver by the City or User Group of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.

f. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

g. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

h. This Agreement and Exhibits are the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon. This Agreement shall supersede all prior written and oral negotiations, understandings or agreements.

i. There are no representations, warranties or stipulations, either oral or written, not herein contained.

j. No amendments to this Agreement shall be binding unless such amendment is in writing and executed with the same formality and approvals as this Agreement. This Agreement may be amended only by a written instrument signed by both parties.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first shown below.

CITY OF DULUTH

ARROWHEAD FAST PITCH LEAGUE
ASSOCIATION

By: _____
Mayor

By: _____

Attest: _____
City Clerk

Printed Name: DENNIS PETERSON

Its: _____

Date Attested: _____

Dated: 4/7/17

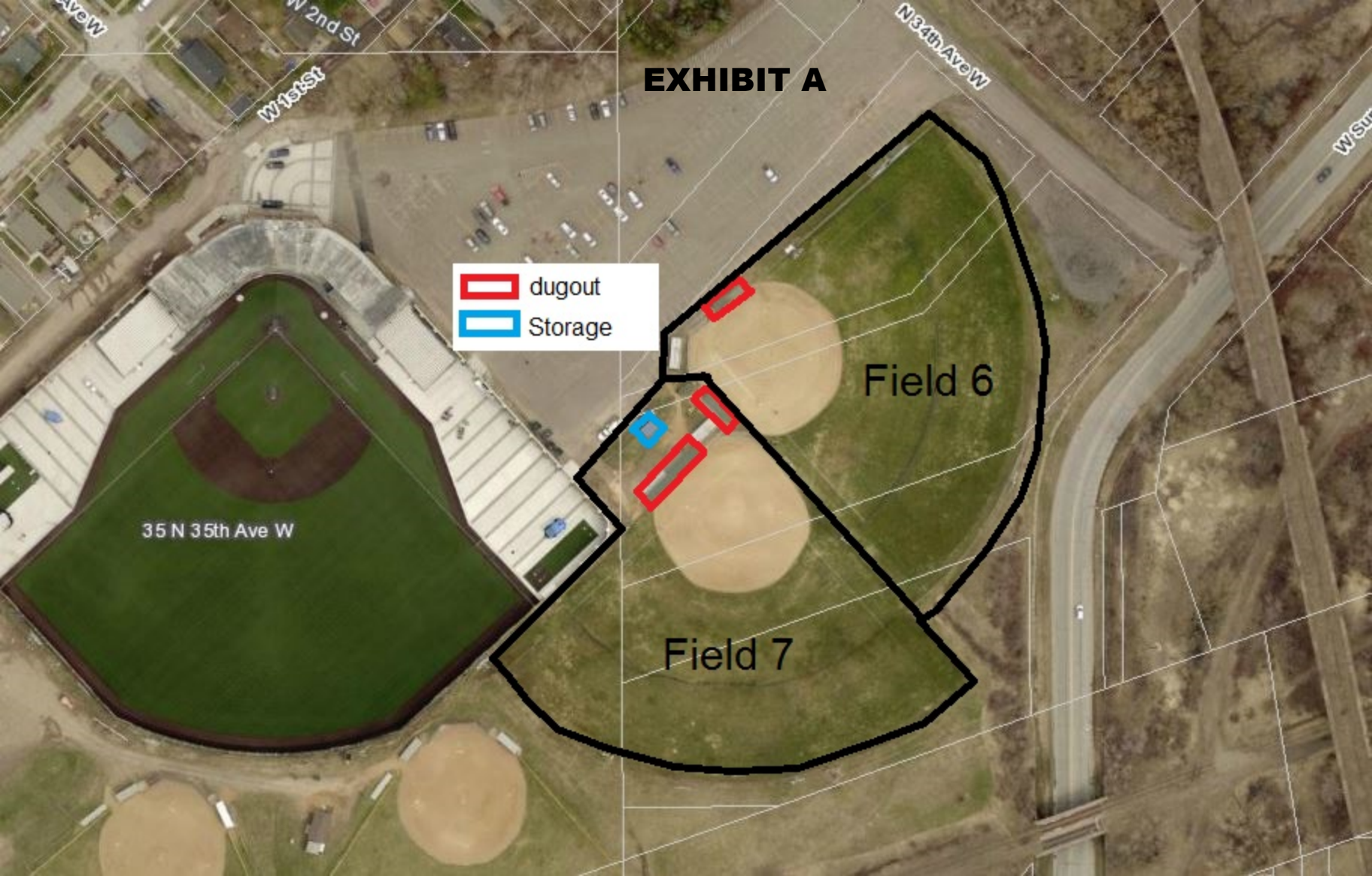
Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A



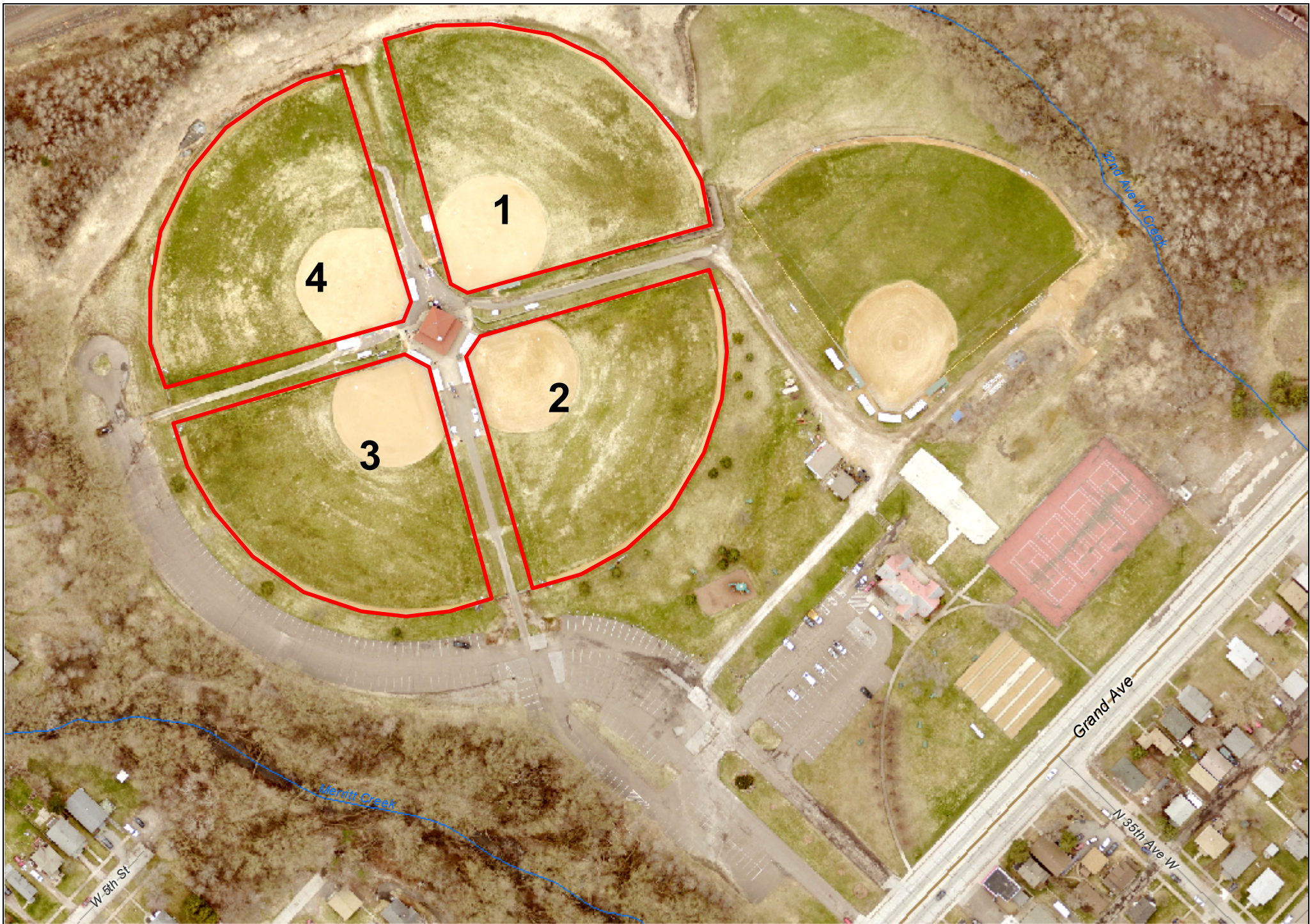
dugout

Storage

Field 6

Field 7

35 N 35th Ave W



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

Exhibit B

Wheeler Field Softball Complex

0 75 150 Feet
1 inch = 150 feet



photo date: 2016
Printed: 3/13/2017



EXHIBIT C**City of Duluth Incident/Injury Report**

Supervisor to complete within 24 hours of incident/injury. If injury required treatment by a medical provider, attach medical documentation. Completed forms should be emailed to accidentreporting@duluthmn.gov.

Date of incident/injury:	☐ Employee ☐ Non-Employee	Department/Division:
Choose one that best describes this claim: ☐ Incident only, no medical care ☐ Medical only, no lost time ☐ Injury includes lost time		
Initial treatment sought: ☐ Hospital ER ☐ Clinic ☐ Refused to see MD / None	Doctor/clinic name, address, phone number:	

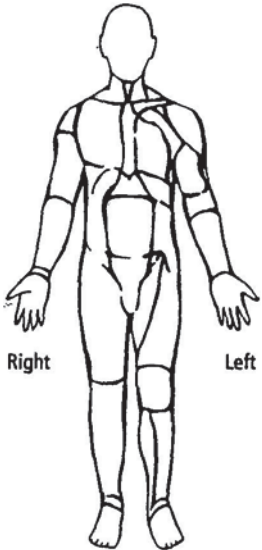
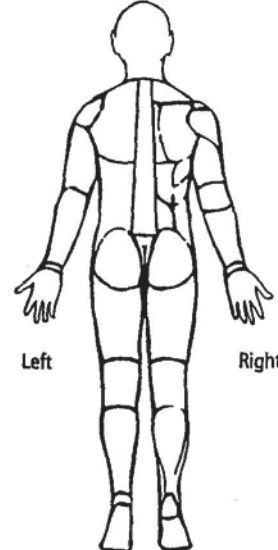
Last name:	First name:	MI:	SSN:
Address:			
City:	State:	Zip code:	Phone:
Date of hire:	Occupation:	Date of birth:	
		Gender: ☐ Male ☐ Female	

Did injury occur on employer's premises? ☐ Yes ☐ No	Name and address of the place of the occurrence:
Time employee began work: _____ ☐ a.m. ☐ p.m. Time of injury: _____ ☐ a.m. ☐ p.m.	
Date employer notified of injury: _____ Date employer notified of lost time: _____	
First date of any lost time: _____ Return to work date: _____ RTW with restrictions: ☐ Yes ☐ No ☐ N/A	
Describe the nature of the illness or injury. Be specific. Include body parts affected.	
Describe the activities when injury occurred with details of how it happened.	
What tools, equipment, machines, objects and/or substances were involved?	

Incident investigation conducted: ☐ Yes ☐ No	Date supervisor notified: _____	Date report completed: _____
Supervisor name: _____	Supervisor phone number: _____	
Names and phone numbers of witnesses:		
Incident was a result of: ☐ safety violation ☐ machine malfunction ☐ product defect ☐ motor vehicle accident ☐ N/A		
Supervisor comments:		
What actions have been taken to prevent recurrence?		

EXHIBIT C

City of Duluth Incident/Injury Report

CAUSE ☐ Slip and fall ☐ Struck by equipment ☐ Lifting or moving ☐ Caught (in, on, or between) ☐ Needle puncture ☐ Object in eye (☐ Right ☐ Left) ☐ Repetitive/overuse ☐ Other (specify): _____ TYPE OF INJURY ☐ Scrape/bruise ☐ Sprain/strain ☐ Puncture wound ☐ Cut/laceration ☐ Concussion ☐ Bite ☐ Chemical burn/rash/breathing difficulties ☐ No apparent injury ☐ Other (specify): _____	MARK AREAS OF INJURY BELOW: Areas can be marked by typing an "X" in the text box wherever needed. Front  Right Left Back  Left Right
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COMPLETE FOR VEHICLE, EQUIPMENT, OR PROPERTY DAMAGE					
<u>For vehicle accidents:</u> Attach sketch and additional information of how vehicle accident occurred. Include street names, direction of travel, locations of vehicles, objects and traffic control devices (↑ North)					
Incident Location: _____			Time of incident: _____ ☐ a.m. ☐ p.m.		
Police called: ☐ Yes ☐ No		Police Traffic Accident Report ICR #: _____			
City vehicle, property, or equipment involved	Description:				
	Vehicle #:		Make/Model:		Year:
	Describe damage:				
Non-city vehicle, property, or equipment involved	Owner full name:			☐ Driver ☐ Passenger ☐ Other	
	Owner address:				
	Owner phone number:			Vehicle license #:	
	Make/Model:		Color:		Year:
	Describe damage:				
<u>Weather conditions:</u> ☐ Clear ☐ Wind ☐ Rain ☐ Cloudy ☐ Fog ☐ Sleet ☐ Snow		<u>Roadway conditions:</u> ☐ Dry ☐ Mud ☐ Wet ☐ Paved ☐ Snow ☐ Unpaved ☐ Ice		<u>Light conditions:</u> ☐ Night ☐ Day ☐ Good ☐ Poor	
Approximate temperature: _____ °F Estimated speed: _____ mph Vehicle: ☐ Loaded ☐ Empty What was load: _____ Drug and/or alcohol test? ☐ Yes ☐ No ☐ N/A					

The Incident/Injury Form should be printed and signed by supervisor and employee. Completed forms can be scanned to accidentreporting@duluthmn.gov.

Supervisor Signature: _____

Date: _____

Employee Signature: _____

Date: _____